



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 21st day of May, 2008

Served: May 21, 2008

In the Matter of

**2007/2008 U.S.-COLOMBIA
COMBINATION FREQUENCY
ALLOCATION PROCEEDING**

Docket DOT-OST-2007-0006

FINAL ORDER

Summary

By this Order, we make final our tentative findings and conclusions set forth in Order 2008-3-4 with respect to allocation of 21 U.S.-Colombia frequencies newly available under the U.S.-Colombia Air Transport Agreement and reallocation of seven weekly U.S.-Colombia combination frequencies currently allocated to American Airlines, Inc. (American), resulting in a total of 28 frequencies allocated in this proceeding.

Specifically, we award Delta Air Lines, Inc. (Delta), JetBlue Airways Corporation (JetBlue), Spirit Airlines, Inc. (Spirit), and Continental Airlines, Inc. (Continental) seven frequencies each, along with underlying economic authority, as needed, to provide combination services in the U.S.-Colombia market as follows: 1) Delta for its proposed New York (JFK)-Bogota services, effective immediately; 2) JetBlue for its proposed Orlando-Bogota services, effective immediately; 3) Spirit for its proposed Ft. Lauderdale-Bogota services, effective immediately; and 4) Continental for its proposed Houston-Bogota services, effective October 1, 2008.

Background

On September 28, 2007, the governments of the United States and the Republic of Colombia agreed, among other things, to increase the number of weekly frequencies available to carriers of each country for scheduled combination services, with U.S. carriers being authorized to operate a total of 91 weekly combination frequencies between the United States and Colombian points that are subject to frequency limitations. The agreement is referred to here as the 2007 Understanding. The 2007 Understanding

also provides that scheduled combination services to the Colombian cities of Barranquilla and Cartagena de Indias are not subject to frequency limitations. As a result of the 2007 Understanding, the United States may allocate to U.S. carriers a total of 21 additional weekly combination frequencies in three stages, with seven frequencies available for institution of service effective on each of the following dates: December 1, 2007; April 1, 2008; and October 1, 2008.

On November 26, 2007, the Department issued Order 2007-11-23, instituting the 2007/2008 U.S.-Colombia Combination Frequency Allocation Proceeding, and inviting applications from interested U.S. carriers for certificate or exemption authority and for allocation of these 21 newly available frequencies. By Order 2007-11-23, we also put at issue in this proceeding the retention by American of seven of its currently allocated U.S.-Colombia combination frequencies.¹

Five carriers - Continental, Delta, JetBlue, Spirit, and US Airways Inc. (US Airways) - filed applications for the available combination frequencies to provide services in the U.S.-Colombia market.² In addition, American submitted evidence to support its retention of seven U.S.-Colombia combination frequencies whose allocation is being reexamined in this proceeding.

Continental requested seven frequencies to serve the Houston-Bogota market with B-737 aircraft effective April 1 or October 1, 2008. Delta requested seven frequencies to serve the New York (JFK)-Bogota market with B-757 aircraft effective December 1, 2007, and seven frequencies to serve the Atlanta-Medellin (four weekly flights) and Atlanta-Cali (three weekly flights) markets with B-737 aircraft effective April 1, 2008. JetBlue requested seven frequencies to serve the Orlando-Bogota market effective April 1, 2008, and seven frequencies to serve the Ft. Lauderdale-Bogota market effective October 1, 2008, using A-320 aircraft in both markets.³ Spirit requested a total of 28 frequencies to provide double-daily service from Ft. Lauderdale to both Bogota and Medellin with A-319 aircraft, requesting the seven frequencies available December 1, 2007, April 1, 2008, and October 1, 2008, respectively, as well as the seven frequencies currently allocated to American that are at issue in this proceeding.⁴ US Airways requested seven frequencies to serve the Charlotte-Bogota market with A-319 aircraft effective October 1, 2008.⁵ American sought to retain its seven frequencies that are at issue in this proceeding

¹ American subsequently petitioned for reconsideration of our decision to place its seven frequencies at issue in this proceeding. On December 21, 2007, we issued Order 2007-12-21, denying the relief requested by American.

² The applicants also filed for exemption or certificate authority as required.

³ JetBlue proposes single plane service to/from New York (JFK) for its Orlando-Bogota flights and single plane service to/from Washington, D.C. (Dulles) for its Ft. Lauderdale-Bogota flights.

⁴ Spirit proposes to initially operate daily service between: 1) DCA-FLL-BOG-FLL-ORD; and 2) DCA-FLL-MDE-FLL-ORD. If awarded all 28 frequencies as of 10/1/08, it then proposes to operate daily service between: 1) LAX-FLL-BOG-FLL-LGA; 2) LGA-FLL-BOG-FLL; and 3) DCA-FLL-MDE-FLL-ORD. It would also operate four weekly frequencies between FLL-MDE-FLL-MCO-ATL and three weekly frequencies between ATL-MCO-FLL-MDE-FLL.

⁵ US Airways proposes single plane service to/from Washington, D.C. (Reagan).

and stated its plans to continue using three of the frequencies in the Miami-Bogota market and four of the frequencies in the Miami-Medellin market.⁶

After examining the applications and responsive pleadings filed, by Order 2008-3-4, issued March 5, 2008, we tentatively decided to reallocate the seven American frequencies that were at issue in this proceeding, resulting in a total of 28 frequencies to be allocated. We tentatively decided to award Delta, JetBlue, Spirit, and Continental seven frequencies each, along with underlying economic authority, as needed, to provide combination services in the U.S.-Colombia market as follows: 1) Delta for its proposed New York (JFK)-Bogota services, effective immediately; 2) JetBlue for its proposed Orlando-Bogota services, effective April 1, 2008; 3) Spirit for its proposed Ft. Lauderdale-Bogota services, effective April 1, 2008; and 4) Continental for its proposed Houston-Bogota services, effective October 1, 2008. We allowed 14 calendar days for the filing of objections to our tentative decision and seven days for responses to objections.

American and US Airways filed objections to each of the tentative awards. Delta and Spirit filed objections to the tentative award to Continental. With the exception of American, each of the applicant carriers filed comments to the objections, as did the City of Houston and the Greater Houston Partnership (Houston Parties).⁷

Summary of Responsive Pleadings⁸

American objects to the Department's tentative decision, arguing that its frequencies were unfairly placed at issue in this proceeding. It states that conclusory statements in the tentative decision on "new competition" and "expanded service options" do not justify seizure and reallocation of its authority. American claims that its additional service from Miami is demonstrably more beneficial to the public interest than all four tentatively selected proposals, noting that its service not only serves the largest Origin & Destination (O&D) market at Miami, but also offers extensive on-line connections. American asserts that the Department has previously rejected the idea that the total number of limited-entry frequencies already held by an applicant is a decisive carrier selection factor. In support of that argument, American cites Order 2007-2-10 in the

⁶ On February 22, 2008, American filed a motion for leave to update its December 6, 2007 response to the evidence request in this proceeding. In its motion, American informed the Department that for various reasons it would suspend operation of its seven frequencies that are at issue in this proceeding, effective April 7, 2008. American states that after that date it will operate double daily flights from Miami to both Bogota and Medellin and a single daily Miami-Cali flight. American states that if the Department's final order in this case returns the seven frequencies to American, it will use them to restore its third daily flight between Miami and Bogota, subject to a 90-day start-up condition. No party opposed American's motion, and we will grant it. The change in American's planned use of the frequencies does not alter our analytical conclusions on the relative merits of its proposal.

⁷ In addition, we have included in the record correspondence supporting the tentative selection of JetBlue's Orlando-Bogota proposal that was filed by JetBlue on behalf of the Mayor of the City of Orlando, the Mayor of Orange County, and the Greater Orlando Aviation Authority. This correspondence was formally filed in the Docket and served on the parties to the proceeding.

⁸ American, Delta, Spirit, and US Airways all object to the tentative award to Continental. Their objections to Continental are collectively summarized later in this Order, beginning at page 6.

2007 U.S.-China Combination and All-Cargo Frequency Allocation Proceeding, where the Department awarded seven U.S.-China frequencies to United for service between Washington, D.C. (IAD) and Beijing. American contends that, in the cited case, the Department was not persuaded by arguments that, because of United's position as the carrier having the largest number of frequencies in the U.S.-China market, United's selection ran counter to the Department's pro-competition policy. It states that the Department instead weighed the various carrier selection factors in light of the particular circumstances presented, including the fact that Washington-Beijing (like Miami-Bogota here) was "the largest O&D market" at issue.⁹

With regard to Delta's tentative award, American highlights Continental's existing Newark-Bogota service, and contends that the show-cause order implies that Newark and New York are separate markets, although both airports serve New York.¹⁰ It again asserts that Delta's code-share relationship with Avianca should weigh against Delta. In support of its argument, American cites two U.S.-Mexico carrier selection cases in which the U.S. carriers that were not selected for route awards had existing access to the city-pair market in question via code-share agreements with a Mexican carrier.¹¹ Further, American argues that Continental's existing service to Bogota from Newark offers far greater connecting services than would Delta's proposed Bogota service from New York (JFK).

American objects to the tentative award of frequencies to JetBlue for its proposed Orlando-Bogota service, expressing doubt about the size of the local Orlando-Bogota O&D market and stating that the Department provides no support for concluding that JetBlue's proposal would be viable and sustainable. It asserts that, while Orlando may be the seventh-largest O&D market to Bogota, it is a fraction of the size of the Miami-Bogota market, and smaller than both the Washington-Bogota and Chicago-Bogota markets, neither of which has scheduled nonstop Bogota service. American notes several Orlando-South America markets that are larger than Orlando-Bogota without nonstop service and points out the overall lack of nonstop service from Orlando to any South American point.¹² American also questions the competitive value of JetBlue's single plane one-stop service from JFK to Bogota via Orlando, noting that JetBlue's service would be competing against 21 weekly nonstop flights and a host of nonstop-to-nonstop connecting opportunities in the New York-Bogota market.

With respect to the tentative award to Spirit, American maintains that there is no compelling need for flights to Colombia from Ft. Lauderdale, contending that South Florida is well served via American's Miami hub. It asserts that Spirit has made no credible showing that Colombia passengers would prefer to arrive or depart at Ft. Lauderdale, located approximately 25 miles north of American's Miami gateway.

⁹ Objections of American, at 2-3.

¹⁰ In support of its argument, American cites Order 2005-2-14 in the 2005/2006 U.S.-China Air Services Case and Designations.

¹¹ Objections of American, at 7.

¹² Objections of American, at 11-12.

American reiterates its arguments that the applications of JetBlue and Spirit should be dismissed due to non-compliance with the evidence request in the instituting order. It again points out the limited connecting services offered by both carriers, asserting that the connectivity provided by American at Miami should accordingly be a decisive factor in this case, consistent with Department precedent.¹³

Delta requests that the Department finalize its tentative selection of Delta's New York (JFK)-Bogota service.¹⁴ Responding to American's assertion that the massive service imbalance to Colombia between New York and Miami is justified due to higher market demand from South Florida, Delta argues that American ignores the fact that, even adjusted for demand, South Florida enjoys far more U.S.-carrier service to Colombia than does New York. Delta also states that the U.S.-Mexico decisions cited by American do not support Delta's disqualification for an award because of its relationship with Avianca. Delta notes that, in those cases, unlike here, all of the applicant proposals were for the same city-pair market and, in that context, the Department considered code-share services already provided by applicants in that city-pair market as a factor relevant to an award of authority.¹⁵

Delta asserts that US Airways' objection incorrectly contends that American, Continental, and Delta are all fungible incumbents who somehow collectively dominate the U.S.-Colombia market. Delta notes that it is currently permitted to operate only a single Atlanta-Bogota flight while Continental and American are entitled to operate three and five times that amount, respectively. It asserts that the fact that Delta and Continental are both SkyTeam members is irrelevant, noting that their alliance relationship is not immunized, both carriers compete on every route they serve, and they do not codeshare on each other's U.S.-Colombia services.¹⁶

JetBlue asserts the positive benefits of its Orlando-Bogota proposal as a new entrant carrier and urges the Department to finalize at least that portion of its tentative decision. JetBlue notes that its proposal will open a new gateway at Orlando with the establishment of the first nonstop service of any kind to Colombia.¹⁷ JetBlue maintains that its Orlando-Bogota service should result in market stimulation similar to its new entry in other markets, and generate substantial benefits to the traveling public through increased capacity and lower fares. It states that, while American's argument that Orlando accounts for less Bogota O&D traffic than Miami is true, American fails to account for the fact that Miami already has extensive nonstop service to Bogota while Orlando has none. With regard to American's argument that there are U.S.-Colombia markets larger than the Orlando-Bogota market that do not have nonstop service, JetBlue responds that

¹³ American cites Order 2006-4-22 in the *Chicago-Cancun Combination Service Proceeding*, Order 2002-4-9 in the *U.S.-Turkey Third-Country Code-share Opportunities* case, and Order 2005-10-2, in the *2006 U.S.-Argentina Combination Frequency Proceeding*, in support of its argument.

¹⁴ Delta also requests that we award it the seven frequencies we tentatively allocated to Continental so that Delta could serve Atlanta-Medellin and Atlanta-Cali. *See infra*.

¹⁵ *Reply Comments of Delta*, at 3-4.

¹⁶ *Reply Comments of Delta*, at 8.

¹⁷ *Consolidated Reply of JetBlue*, at 2.

no carrier proposed service from those gateways in this proceeding. Similarly, JetBlue discounts American's argument that Bogota ranks fourth among Orlando-South America markets, noting that this proceeding only involves service proposals for Colombia. JetBlue also asserts that American's arguments with regard to JetBlue's single plane service from New York (JFK) are without merit, noting that the Department based its tentative award on the benefits of establishing service at Orlando.

Spirit asks the Department to finalize its tentative award for Ft. Lauderdale-Bogota service.¹⁸ Spirit asserts that its Ft. Lauderdale-Bogota service will provide new entry, market stimulation, competition, and low fares. It contends that, while American's objection raises no new arguments against an award to Spirit, the arguments of American for retaining its own South Florida service help support Spirit's contention that the South Florida-Colombia market is the largest U.S.-Colombia market and needs more service.¹⁹ Spirit maintains that, rather than adding American's additional service from Miami, the Department properly determined that this urgent need can best be met by adding Spirit's service from Ft. Lauderdale because Ft. Lauderdale provides geographic advantages distinct from Miami, important market opportunities, and significant new entry and competition to the incumbent service provided by American and Avianca. Spirit notes that, while having the most frequencies does not disqualify a carrier from an award, the Department properly considered new entry to be the most important public interest benefit in the U.S.-Colombia market.

US Airways asserts that the Department's tentative decision gives insufficient weight to the numerous consumer benefits that would result from selecting US Airways for Bogota service from its proven Charlotte hub. It states that if the Department's tentative decision is made final, the frequency holdings of the largest incumbents would be overwhelming, with nearly 85% of the available frequencies allocated to American, Continental, and Delta, with only 15% allocated to new entrants.²⁰ US Airways also argues that no consideration was given to alliance competition, stating that the SkyTeam and oneworld alliances would operate 77 frequencies, and Star Alliance members none. US Airways states its belief that the tentative decision is internally inconsistent, because the show-cause order acknowledges the importance of new entry, yet tentatively denies the application of US Airways--the one new entrant carrier that offers a new network gateway, benefits of alliance competition, and other significant competitive benefits. US Airways argues that the tentative decision instead unduly rewards incumbent carriers Continental and Delta.²¹ It further maintains that the tentative decision places undue weight on the comparative size of the local Charlotte-Bogota market, and does not accord adequate weight to the power of US Airways' Charlotte hub.

Delta and **Spirit** join **American** and **US Airways** in objecting to the tentative frequency award to Continental for its Houston-Bogota proposal, with all four carriers asserting that

¹⁸Spirit also requests that we award it the seven frequencies we tentatively allocated to Continental so that Spirit could serve Ft. Lauderdale-Medellin. *See infra*.

¹⁹Consolidated Answer of Spirit, at 4.

²⁰Objection of US Airways, at 4.

²¹Objection of US Airways, at 6.

very little public benefit would be gained by Continental's duplicative service.²² The carriers contend that Continental overstates the need for more Colombia service from the central/western United States. They also assert that because Continental, the second largest incumbent, operates four of its Houston-Cali frequencies on a seasonal basis only, it should not be awarded additional U.S.-Colombia frequencies. The carriers also restate their initial arguments that Continental's late-night schedule is inconvenient for passengers.

Continental rejects the arguments of the objecting carriers and requests that the Department finalize its tentative decision awarding Continental seven frequencies for Houston-Bogota service. It cites the extraordinary imbalance of service to Colombia between the eastern versus the central/western United States, pointing out the lack of convenient U.S. carrier service to Colombia from points west of Atlanta. Continental states that, while it is true that there is more traffic to Colombia from the eastern United States than from the central/western United States, the extraordinary imbalance in flights is far greater than the imbalance in traffic. In support of its argument, Continental claims that as of August 2007, the eastern United States had six and one-half times the frequencies of the central and western United States, but only four times the traffic and Colombian population.²³ In addition, with 21 frequencies tentatively awarded in this case for service from eastern gateways and Avianca's recent application for authority to operate Washington (IAD)-Bogota service, Continental contends that the public interest clearly requires an award of seven frequencies for the only service proposed in this proceeding from a point west of Atlanta. Continental also discounts arguments regarding Continental's proposed late-night flight, again noting that most carriers offer similarly scheduled flights on numerous routes, both between the United States and South America and otherwise. In responding to arguments that Continental is misusing its currently allocated frequencies, Continental contends that it is operating four of its Houston-Cali frequencies just as it stated it would when it applied for them.

Decision

We have decided to make final our tentative decision to reallocate seven weekly U.S.-Colombia combination frequencies that are currently allocated to American. We have further decided to make final our tentative decision to allocate Delta, JetBlue, Spirit, and Continental seven frequencies each, along with underlying economic authority, as needed, to provide combination services in the U.S.-Colombia market as follows:

1) Delta for its proposed New York (JFK)-Bogota services, effective immediately; 2) JetBlue for its proposed Orlando-Bogota services, effective immediately; 3) Spirit for its proposed Ft. Lauderdale-Bogota services, effective immediately; and 4) Continental for its proposed Houston-Bogota services, effective October 1, 2008.

As we stated in the order to show cause, the record in this proceeding reflects both

²² Instead of an award to Continental, each of the carriers requests that it be awarded the seven frequencies, for the following services: American (Miami-Bogota); Delta (Atlanta-Medellin/Cali); Spirit (Ft. Lauderdale-Medellin); and US Airways (Charlotte-Bogota).

²³ Answer of Continental, at 2.

service and competition deficiencies that have existed in the U.S.-Colombia market as a result of the long-restricted bilateral environment. The 2007 Understanding provides the Department with its first opportunity since 2000 to introduce new competition into the U.S.-Colombia market and to correct service deficiencies that have become increasingly apparent with the growth of the U.S.-Colombia overall market.²⁴ In making our tentative findings and awards, we stated that our ability to award the newly available rights in this restricted market would permit us to enhance competition by the introduction of new entrant carriers. We also stated that having the ability to make multiple awards would enable us to achieve other objectives in the public interest, namely the ability to open new gateways and add service in underserved markets. We tentatively found that this multifaceted approach best served the public interest.

Against that background, we tentatively concluded that the proposals of Delta, JetBlue, Spirit, and Continental would provide the most significant public interest benefits in this proceeding by offering a variety of attributes that should have a positive and demonstrable impact on the U.S.-Colombia service needs and market structure. Delta's New York (JFK)-Bogota proposal would add U.S.-flag nonstop service in the large but underserved New York (JFK)-Colombia market, and would also furnish meaningful competition with the daily JFK-Bogota services offered by the Colombian carrier, Avianca, as well as competition with the Newark-Bogota services of Continental. The introduction of two new entrants in the strong Florida-Colombia market, JetBlue and Spirit, would provide much needed competition in a frequency-limited U.S.-Colombia market that has not seen the entry of a new U.S. competitor since the year 2000. JetBlue would offer the first nonstop service of any kind from Orlando, the largest proposed gateway in this proceeding lacking any nonstop service to Colombia. We also tentatively concluded that Spirit's proposed Ft. Lauderdale-Bogota services would enhance competition with the entrenched U.S. and foreign-flag incumbents at Miami and Ft. Lauderdale. Finally, while we considered carefully the merits of introducing a third new entrant at Charlotte, another eastern United States hub, we tentatively determined that Continental's Houston-Bogota service would result in more significant public interest benefits by addressing the great disparity that currently exists in available U.S.-Colombia service options as between the central/western and the eastern regions of the United States.

Having considered the range of benefits that the tentatively selected new services would bring to the overall U.S.-Colombia market, and having considered the responses of the parties to the tentative decision, we are not persuaded that the public interest calls for a different result. On the contrary, given the service deficiencies and competitive limitations in the U.S.-Colombia market, we remain persuaded that, on balance, the ability to add the first-ever U.S. flag service in the New York (JFK)-Colombia market, two new entrant carriers in the highly competitive Florida-Colombia market, as well as a second daily Houston-Bogota service (Houston being the third largest O&D market for U.S.-Bogota traffic and the only gateway proposed in this proceeding west of Atlanta),

²⁴ The Order to Show Cause refers to the growth in Origin & Destination (O&D) traffic between the United States and Colombia of about 200,000 passengers between the years 2002-2006, with traffic between the United States and Bogota representing, by far, the greatest proportion of traffic. *See* Order 2008-3-4, at 2.

will provide the best overall combination of public benefits and will allow us to achieve the enhanced service and market structure benefits we envisioned in Order 2008-3-4.

As an initial matter, we stated in the instituting order for this proceeding, Order 2007-11-23, that we would reexamine the allocation of seven frequencies used by American to serve the Miami-Bogota and Miami-Medellin markets in the context of this carrier selection proceeding and, in doing so, weigh whether the public interest would be better served by allowing American to retain those seven frequencies or allocating them to other applicants.²⁵ We note that American had originally announced that it would use those frequencies for Miami-Barranquilla service. American subsequently shifted those seven frequencies unilaterally to the Miami-Bogota and Miami-Medellin markets, both of which American was already serving with greater than daily service. However, the Department had expressly put American on notice in permitting American to retain those seven frequencies that if it did not use the frequencies as proposed, the Department would reexamine the matter.²⁶ Thus, American's subsequent change in the use of those frequencies meant that the Department was free to reexamine their allocation. In Order 2008-3-4, we tentatively found that, on balance, the benefits that would be derived from allowing American to retain the seven frequencies were sufficiently outweighed by the benefits of new competition and expanded service options in the overall U.S.-Colombia market as to warrant reallocation of the frequencies. Accordingly, we tentatively decided to reallocate the seven frequencies currently allocated to American that were included for reexamination in this proceeding, along with the 21 newly available frequencies, for a total of 28 frequencies. We affirm our tentative decision here.

Even with reallocation of frequencies now allocated to American, Miami/Ft. Lauderdale will still enjoy approximately 73 weekly flights to frequency-limited Colombian points, 35 of which will be operated by American from Miami. The Miami gateway alone would still have 66 weekly flights to frequency-limited Colombian points, including 31 weekly Bogota flights and 21 weekly Medellin flights, with American offering double daily service to Bogota and Medellin. While it is true, as American asserts, that the Miami/Ft. Lauderdale-Colombia market is by far the largest U.S.-Colombia market, it is no less true that this market has substantially more service than any other. We therefore conclude that any limited benefits resulting from American's continued use of the frequencies to expand its Miami-Colombia services in markets where it already offers more than daily service are outweighed by the valuable service and competitive benefits offered by the tentatively selected proposals. As we specifically noted in our tentative decision, allowing American to retain seven frequencies to augment its existing services would inevitably mean that one of the important public interest needs addressed in our four tentative selections would go unmet. American has not persuaded us that the public interest would favor such a result.

American asserts that it should not be disqualified for a frequency award simply because it holds the most frequencies in the U.S.-Colombia market, citing the *2007 U.S.-China Combination and All-Cargo Frequency Allocation Proceeding*. However, as explained in

²⁵ Order 2007-11-23, at 3.

²⁶ Order 2007-12-21, at 4.

the show-cause order and affirmed here, our tentative decision to reallocate seven frequencies currently allocated to American was not based on American's market dominance, but rather on the relative public benefits of its proposal as compared to the benefits of the other proposals presented in this proceeding.²⁷

American challenges the relative merits of each of the four selected proposals when compared with the benefits of American's proposed continuation of these services. We address American's arguments with respect to the relative merits of each of the selected carrier awards, in turn.²⁸

Delta (New York (JFK)-Bogota). American, citing past Department decisions, objects to the proposed award of seven frequencies to Delta because Delta has access to the New York-Colombia market under a code-share agreement with Avianca. However, none of the cases cited by American involved a situation where the U.S. codesharing partner was proposing to provide the first U.S.-metal nonstop service in a market of the relative magnitude of, and with the relative service disparity of, New York (JFK)-Bogota, and where no non-codesharing U.S. carrier applicant in the case was proposing to serve that same market. In this regard, we weighed the Delta-Avianca code-share relationship in the specific context of this proceeding, and we affirm our tentative finding that the introduction of first-ever U.S.-flag direct carrier services by Delta would represent a significant service and competitive enhancement in the New York (JFK)-Bogota market.

American also discounts Delta's connecting service at New York (JFK), and argues that Continental's service to Bogota from Newark offers far greater connecting services. However, our tentative selection of Delta was not based upon the value of its connecting services at New York (JFK). Rather, our selection of Delta was based essentially upon the need for additional and competitive nonstop service to Colombia by a U.S.-flag carrier for the significant local market of Colombian traffic originating at New York.

Contrary to American's criticism that we improperly suggested that the New York and Newark markets are separate and distinct gateways, the show-cause order recognized that Continental provides daily Newark-Bogota service, and we included that service in our analysis of the overall New York-Colombia market. Nevertheless, we tentatively concluded that the New York-Colombia market is underserved in comparison to the Miami/Ft. Lauderdale-Colombia market, and affirm that conclusion here. The amount of Colombia O&D traffic from Miami/Ft. Lauderdale is slightly less than double that from the New York metropolitan area.²⁹ However, there are currently only 20 weekly flights

²⁷ That said, we find American's reliance on the *2007 U.S.-China Combination and All-Cargo Frequency Allocation Proceeding* misplaced. In that case, unlike the situation involving Miami-Colombia, there was no existing nonstop service between Washington, D.C. and China. Taking into account the relative merits of the proposals then before us, we determined that, in the circumstances presented, United's Washington-Beijing proposal warranted selection. In this case, and again taking into account all the proposals before us, we find that American's continued use of the frequencies in markets where it already offers extensive nonstop services, does not offer public benefits that would justify American's retention of the frequencies.

²⁸ To the extent that US Airways also challenged these awards, our findings in response are encompassed in the discussion below.

²⁹ Department O&D data for the 12 months ended June 2007.

operated between the New York metropolitan area and frequency-limited Colombian points, as compared to approximately 73 weekly flights operated between Miami/Ft. Lauderdale and frequency-limited Colombian points.³⁰ When measured against the traffic data, the available service options at these gateways represent a clear service disparity, and American has not presented any new argument regarding this disparity that leads us to reconsider our award to Delta. Notably, Delta's proposal would provide the first-ever U.S.-carrier service to Colombia from New York (JFK); offer competitive benefits, including vis-à-vis Continental's Colombia service from Newark; and inject a large amount of capacity into the market. Accordingly, we affirm our tentative finding that the service and competitive benefits of Delta's New York (JFK)-Bogota service proposal outweigh the public interest benefits of American's proposal.

JetBlue (Orlando-Bogota). American challenged the merits of JetBlue's proposal based on the size of the Orlando O&D market and the alleged lesser connecting services offered by JetBlue at Orlando. However, as we said in our tentative decision, Orlando is the seventh-largest U.S.-Bogota O&D market overall, and the largest gateway proposed in this proceeding lacking at least one nonstop service option by any carrier.³¹ We would not deprive this market of a chance to gain first-time nonstop Colombia service, in favor of American's adding frequencies to markets already enjoying such service, simply because other larger U.S.-Colombia markets might exist. No applicant sought service in such markets in this case. With respect to American's arguments regarding the limited connecting services of JetBlue, we note that our focus in tentatively selecting JetBlue at Orlando was on the benefits it will bring as a new Colombia entrant to the Orlando gateway. We recognized that JetBlue's behind-Orlando connecting services could provide a competitive enhancement, but this was essentially supportive to the Orlando-Bogota attributes of JetBlue's proposal. In these circumstances, we see nothing in American's arguments to alter our result.

Spirit (Ft. Lauderdale-Bogota). With regard to our tentative award to Spirit, American questions the need for Spirit's proposed service to Colombia from Ft. Lauderdale. While we recognize that service is already available in the large Miami/Ft. Lauderdale-Colombia market, the vast majority of that service has long been offered by only two carriers, American and Avianca. One of the benefits of the expanded rights we secured with Colombia is our opportunity to now introduce new competitive options. Our selection of Spirit takes direct advantage of these rights. We find that Spirit's Ft. Lauderdale-Bogota service will introduce new competition into the large Miami/Ft. Lauderdale-Colombia local traffic base by offering an attractive competitive alternative to the existing incumbent services, and would specifically provide important intragateway competition with Avianca's daily Bogota service at Ft. Lauderdale.

³⁰ We note that Avianca has proposed additional New York (JFK)-Bogota service beginning in May 2008. However, the difference in service levels between New York-Colombia and Miami/Ft. Lauderdale-Colombia would remain substantial.

³¹ Order 2008-3-4, at 11-12.

American has not presented any new evidence to persuade us to alter our tentative findings in this regard.³²

Continental (Houston-Bogota). In challenging our proposed award to Continental, American is joined not only by US Airways, but also by Delta and Spirit. The objecting parties argue first that Continental should not be awarded additional frequencies in this proceeding given that it operates seasonal-only Houston-Cali service and could add Houston-Bogota service by shifting its unused Cali frequencies to year-round Bogota service. We disagree. Continental is using the four seasonal frequencies in the manner that it indicated when it applied for them, and, in any event, those frequencies are not at issue in this proceeding.³³ Given the demonstrated need for additional Houston-Bogota service as described below, and given that we have a quantum of available U.S.-Colombia frequencies enabling us to address that need, we see no public interest benefit in obligating Continental to apply to the Department to seek authority to move frequencies from the Houston-Cali market to another market, with the service disruption that would entail, when we can instead allocate frequencies to support Continental's heavily subscribed Houston-Bogota services.

Second, the objectors argue that Continental uses undersized aircraft on its current Houston-Bogota route and can add service simply by using larger aircraft. Continental maintains that there is sufficient demand in the Houston-Bogota market to warrant an additional allocation of frequencies, rather than to increase its aircraft size on its current service. In the order to show cause, we noted that Continental maintains current load factors on its existing Houston-Bogota service that are the highest of any U.S. carrier currently providing U.S.-Colombia combination services.³⁴ In the circumstances presented, we are not inclined to interfere with the judgment of Continental's management on how best to meet the service needs of the market.

The objectors also challenge the need for additional service from the central and western United States. However, after Miami/Ft. Lauderdale and New York, Houston is the third-largest U.S.-Colombia market. Even with the eastern United States having four times more U.S.-Colombia traffic than the central/western United States, the current service options are disproportionate in terms of O&D traffic. After reallocation of frequencies now allocated to American, there will be approximately 100 weekly flights available to frequency-limited Colombian points from eastern U.S. gateways, 49 of which are operated by U.S. carriers. By comparison, Continental's Houston gateway currently provides travelers with the only available U.S.-carrier nonstop service to Colombia from

³² We have previously addressed American's arguments with respect to the asserted non-compliance of JetBlue and Spirit with the evidence request in this proceeding, noting that the connecting service information in question did not prove material to our tentative decision. *See* Order 2008-3-4, at 15.

³³ *See* Notice of Action Taken dated February 22, 2005, in Docket DOT-OST-2005-20150. We note that the Department approved Continental's application in the absence of opposition from any party. In its objection, American cites decisions in various carrier selection proceedings where the Department selected daily year-round service proposals over those that offered less than that level of service. Those decisions are inapposite. The proposal of Continental under consideration in the instant proceeding is for daily Houston-Bogota service.

³⁴ Order 2008-3-4, at 13.

any U.S. point west of Atlanta, with 10-14 weekly nonstop flights from Houston to frequency-limited Colombian points.³⁵ That service disparity will soon become even greater, as three daily flights awarded in this proceeding will add more Colombia service from U.S. gateways in the eastern portion of the United States, and Avianca prepares to institute five weekly nonstop flights between Washington, D.C. (IAD) and Bogota, beginning June 13, 2008.³⁶

With respect to objections regarding connecting services over other gateways negating the need for more services at Houston, we note that while connections to Colombia already exist for passengers from the central and western United States over other gateways, all of these gateways, with the exception of Avianca's less than daily Los Angeles-Bogota service, are in the eastern United States. We therefore conclude that an award to Continental would offer central and western U.S. passengers an additional, differently-timed connecting option that may be more attractive and less circuitous than the existing connections available to them from east coast gateways.

Finally, the objecting carriers restate their initial arguments that Continental's late-night schedule is inconvenient for passengers, and they question the viability of the proposed service. Continental maintains that by operating its second daily Houston-Bogota service on such a schedule, it will be able to compete more effectively with similar service patterns offered by Colombian carriers. We tentatively found no basis to determine otherwise, and affirm our finding here as no carrier has offered any persuasive evidence that Continental's proposed late-night departure is not viable.

Based upon the factors cited above, and in the particular circumstances presented in this case, we affirm our tentative findings and conclusions that, in light of the geographical imbalance of U.S.-Colombia service options, the paucity of service west of Atlanta, and the evident demand for service based on O&D traffic data, an allocation to Continental for a second daily Houston-Bogota service is warranted to address significant service deficiencies in the U.S.-Colombia market.

We find that these public benefits outweigh not only those of American's proposed service but also those of the other applicant proposals remaining before us. Delta's Atlanta-Medellin/Cali proposal and Spirit's Ft. Lauderdale-Medellin proposal would offer some service benefits as well as competitive options to the existing services operated by incumbents American, Avianca, and Continental. However, the amount of O&D traffic to Medellin and Cali from Atlanta is relatively small, as compared to the other service proposals at issue, and Delta would offer less than daily service in each market. By contrast, Continental proposes daily service in the third largest U.S.-Colombia market and at least in part would remedy the lack of Colombia service from the central/western United States as outlined above. As to Spirit, there are currently three daily flights available between Miami/Ft. Lauderdale and Medellin, as compared to one between Houston and Bogota. In light of this disparity, along with the general overall disparity in services between the western and eastern United States to Colombia, we

³⁵ Avianca also offers four weekly Los Angeles-Bogota flights.

³⁶ Official Airline Guide, April 2008.

conclude, on balance, that Continental's proposal for a second daily Houston-Bogota service addresses a more pressing need in the current U.S.-Colombia market than would the addition of a fourth daily South Florida-Medellin flight.

We also recognize that the various awards made final here preclude selection of another new entrant, US Airways. As noted above, in the order to show cause, we stated that with the Colombia frequencies available we could pursue a number of varied public interest goals: opening new gateways, adding service in underserved markets, and introducing new competition into the U.S.-Colombia market. We made our four tentative selections with these goals in mind.

We appreciate that US Airways' new entrant proposal would open yet another new gateway to Colombia, and that the Department previously has emphasized the importance of new entry in enhancing competition. However, the benefits of new-entrant competition are simply one factor we weigh in arriving at an overall public interest determination. In this case, we find that the new entrant benefits of US Airways at Charlotte do not outweigh the public benefits we foresee from the four selections we have made in this case. Specifically, in light of the limited Charlotte-Bogota local market (the 17th largest U.S.-Bogota market), the existing one-stop Colombia connections and the limited historic Colombia traffic from those points at which US Airways would be offering first-time connecting service to Colombia, we conclude that an award to US Airways would not represent the optimal use of the available frequencies in the circumstances presented.

We have also considered the arguments of US Airways regarding alliance competition. Under the circumstances of this case, even after weighing the potential benefits associated with the entry of a Star Alliance member into the U.S.-Colombia market collectively with the other potential benefits offered by US Airways' proposal, we remain convinced that the service and competition benefits represented in the tentatively selected proposals are superior and more effectively address the service and competitive deficiencies in the market. Thus, while we certainly recognize the competitive attributes of US Airways' new entrant proposal, we believe that the public interest benefits offered by each of the tentatively selected proposals are more compelling.

Having considered the relative merits of the various proposals, arguments and objections presented in this proceeding, we have decided to make final our tentative decision to award seven frequencies each to Delta, for its proposed New York (JFK)-Bogota service; JetBlue, for its proposed Orlando-Bogota service; Spirit, for its proposed Ft. Lauderdale-Bogota service; and Continental, for its proposed Houston-Bogota service. We find that the four selected service proposals will offer public benefits that, on balance, are superior to those of the competing proposals presented in this proceeding.

Economic Authority

We grant Delta, JetBlue, and Spirit exemption authority for a period of two years, subject to renewal, and effective immediately.^{37 38} We note that Continental currently holds certificate authority to provide Houston-Bogota service on Route 645, granted by Order 2001-12-8, in Docket DOT-OST-1996-1318.

We will impose a startup condition for each award. The frequencies we are awarding to Delta, JetBlue and Spirit are available immediately. Therefore, we will require that Delta, JetBlue, and Spirit begin service within 90 days of issuance of this order. The frequencies we are awarding to Continental are effective October 1, 2008, and Continental has stated that it would be prepared to institute service on that date. Therefore, we will require that Continental institute service on October 1.³⁹

In addition, consistent with our standard practice, the frequencies allocated in this proceeding are subject to our standard 90-day dormancy condition, wherein any frequencies not operated for a period of 90 days (once inaugurated) would be deemed dormant. Under the dormancy condition, if any of the frequencies allocated are not used for a period of 90 days (once inaugurated), the frequency allocation with respect to each frequency would expire automatically and the frequency would revert to the Department for reallocation.⁴⁰

ACCORDINGLY,

1. We make final our tentative findings, conclusions and decision in Order 2008-3-4;
2. We reallocate seven of American's currently allocated U.S.-Colombia scheduled combination frequencies as described in this Order, effective immediately;
3. We award Delta Air Lines, Inc. exemption authority to engage in scheduled foreign air transportation of persons, property, and mail between New York, New York (JFK), and Bogota, Colombia, and effective immediately, allocate it seven weekly combination frequencies to perform its proposed operations;

³⁷ We find Delta, JetBlue, and Spirit qualified to provide the authorized services. Each of the carriers has been found to be a citizen of the United States, and fit, willing, and able to provide scheduled foreign air transportation of persons, property, and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. (See Order 2007-9-25, for Delta. See Order 2007-7-3, for JetBlue and Spirit.) We further find that issuance of the authority granted will not result in a near term increase of annual fuel consumption in excess of ten million gallons.

³⁸ The carriers requested both exemption and certificate authority as part of their applications. We will defer action on the carriers' certificate requests and address them separately.

³⁹ Consistent with our standard practice in awarding frequencies, the carriers must inaugurate service with all of the frequencies allocated here within 10 days of their required start-up dates. Any frequency not inaugurated accordingly will revert to the Department.

⁴⁰ As we have noted in other limited entry proceedings, the frequencies allocated represent valuable rights obtained in exchange for rights to Colombian carriers. Accordingly, we remind the selected carriers that the frequencies awarded are for weekly operations. A scheduled carrier may not bank frequencies from one week to the next.

4. We award JetBlue Airways Corporation exemption authority to engage in scheduled foreign air transportation of persons, property, and mail between Orlando, Florida, and Bogota, Colombia, and effective immediately, allocate it seven weekly combination frequencies to perform its proposed operations;
5. We award Spirit Airlines, Inc. exemption authority to engage in scheduled foreign air transportation of persons, property, and mail between Ft. Lauderdale, Florida, and Bogota, Colombia, and effective immediately, allocate it seven weekly combination frequencies to perform its proposed operations;
6. We allocate Continental Airlines, Inc. seven weekly combination frequencies for its proposed Houston-Bogota service, effective October 1, 2008;
7. The frequencies allocated in ordering paragraphs three through six above will remain in effect indefinitely, provided that the holder continues to hold the necessary underlying authority to serve the markets authorized; and provided further that the frequencies will become dormant and will revert automatically to the Department if they are not used for a period of 90 days (once inaugurated);⁴¹
8. We grant the February 22, 2008 motion of American Airlines, Inc. to update its evidence request in this proceeding;
9. We defer action on the pending applications of Delta Air Lines, Inc., JetBlue Airways Corporation, and Spirit Airlines, Inc. for certificate authority to serve the subject markets;
10. To the extent not granted or deferred, we deny the remaining applications in this proceeding;
11. We will not entertain petitions for reconsideration of this order; and
12. We will serve this order on the parties to the captioned docket of the order, the Colombian Ambassador to the United States in Washington, DC, the Federal Aviation Administration, and the U.S. Department of State (Office of Aviation Negotiations).

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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⁴¹ The 90-day dormancy period will begin upon the carriers' implementation of services, such implementation to be in accordance with the startup provisions outlined in this Order.